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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File:



Office: PHILADELPHIA DISTRICT OFFICE

Date:

AUG 08 2001

IN RE:

Petitioner:

Beneficiary:



Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Identifying data deleted to
prevent identity information
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, denied the visa petition to classify the beneficiary as an immediate relative and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on October 9, 1998. The petitioner is a 60 year-old married citizen of the United States, who had one previous marriage. The beneficiary, who at this time is 15 years old, is said to have been born in Daikundi, Afghanistan, on September 30, 1985. The beneficiary's biological mother, [REDACTED] and biological father, [REDACTED], are said to be deceased. The district director denied the petition after determining that the petitioner had not (1) submitted a birth document to establish the beneficiary's parentage, (2) submitted evidence of having legal custody of the beneficiary, (3) established that the beneficiary's biological parents were deceased, (4) provided a copy of his home study report.

On appeal, the Associate Commissioner determined that the petitioner complied with the home study requirement, but failed to overcome the other bases of the director's objections. The Associate Commissioner further noted that the petitioner failed to submit evidence of compliance with all preadoption requirements, if any, in the State of Pennsylvania.

On motion, the petitioner submits additional evidence.

I. BIRTH DOCUMENT FOR THE BENEFICIARY

The director and the Associate Commissioner found that the petitioner did not submit adequate evidence of the beneficiary's birth. Specifically, neither the director nor the Associate Commissioner accepted the petitioner's evidence of the beneficiary's birth, which included a copy of the beneficiary's passport and affidavits from individuals.

On motion, the petitioner states that the instability of the Afghani government since 1979 renders it impossible to obtain a birth certificate from the Afghani government authorities. The petitioner states that the beneficiary's passport identifies the beneficiary as the son of [REDACTED] and that the affidavits from the beneficiary's siblings, family friends, and the local Mullah also attest to the beneficiary's parentage.

The petitioner presents a compelling statement. Records from Afghanistan are not readily available and the documents that the

petitioner has provided are sufficient to establish the beneficiary's birth date and parentage. Accordingly, the petitioner has overcome this portion of the director's and the Associate Commissioner's objections.

II. DEATH CERTIFICATE OF THE BENEFICIARY'S PARENTS

The director and the Associate Commissioner also found that the petitioner did not submit adequate evidence of the deaths of the beneficiary's parents. On motion, the petitioner again states that documents from Afghanistan, such as death records, are not readily available from Afghanistan. The petitioner, therefore, submits an affidavit from the Mullah who performed the funerals for each of the beneficiary's parents.

We concur with the petitioner that the evidence he previously submitted was adequate proof of the deaths of the beneficiary's parents. As previously stated, records from the Afghanistan government concerning deaths are not readily available and the petitioner has presented sufficient documentation that the beneficiary's father and mother are both deceased. Accordingly, the petitioner has overcome this portion of the director's and the Associate Commissioner's objections.

III. LEGAL CUSTODY OF THE BENEFICIARY BY THE PETITIONER

The director and the Associate Commissioner both concluded that the petitioner failed to submit evidence of having legal custody of the beneficiary. On motion, the petitioner merely restates that he has custody of the beneficiary and refers to documents already included in the record. The petitioner does not present any new evidence on motion to overcome the director's objections.

The regulation at 8 C.F.R. 204.3(d)(1)(iv) states that the petitioner must submit "evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country."

8 C.F.R. 204.3(b) defines the term *foreign-sending country* as:

the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

The record reflects that the beneficiary is not residing in his country of citizenship, which is Afghanistan. The beneficiary's

country of last habitual residence is Pakistan; therefore, the laws of custody in Pakistan apply in this case.

According to the United States Department of State¹, in order to file a Form I-600 for a child in Pakistan, the petitioner must obtain custody of the child from a Pakistani family court under the Guardian and Wards Act of 1890. The custody order should allow for emigration and foreign adoption of the child.

The petitioner has not presented any evidence that he has secured custody of the beneficiary pursuant to the Guardian and Wards Act of 1890. The petitioner previously submitted letters from the beneficiary's school master who stated that the petitioner is the guardian of the beneficiary; however, such a letter is not sufficient to show that formal custody of the beneficiary has been secured by the petitioner. Without a formal custody decree, which permits the beneficiary to emigrate and be adopted outside of Pakistan, the Service cannot approve the petition.

IV. PREADoption REQUIREMENTS

The Associate Commissioner found that the petitioner did not submit evidence of compliance with all preadoption requirements for the State of Pennsylvania. The petitioner did not address this issue on motion; thus, the Associate Commissioner's objections have not been overcome on this issue.

The burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); section 291 of the Act, 8 U.S.C. 1361. By failing to show that he has secured custody of the beneficiary in accordance with the laws of Pakistan and complied with the preadoption requirements for the State of Pennsylvania, the petitioner has not sustained that burden. Accordingly, the decision of the district director will not be disturbed.

ORDER: The previous decisions of the district director and the Associate Commissioner are affirmed in part and withdrawn in part. The petition is denied.

¹ General information on international adoptions as well as country-specific information may be found at the Department of State's website at www.state.gov. At the home page click to "Children's Services."